IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.4561 OF 2004

Pune Municipal Corporation ...Petitioner

Vs.

M/s.Kanhiya Provisions Stores ...Respondent

Mr.R.G.Ketkar for the Petitioner
Mr.G.H.Keluskar for the Respondent.

CORAM: A.S.OKA, J.
DATED: JANUARY 27,2006.

P.C.:

1. Heard Shri Ketkar for the Petitioner and the Shri Keluskar for the Respondent. Rule. Shri Keluskar waives service for the Respondent. Considering the facts and circumstances of the case, taken up for hearing forthwith.

2. The Respondent preferred an Appeal under Section 406 of the Bombay Provincial Municipal Corporation Act, 1949 (hereinafter referred to as the said Act). The said Appeal was allowed by reducing ratable value from Rs.27,550/- to Rs.2600/-. The Petitioner-Corporation preferred an Appeal under Section 411 of the said Act before the District Court. Delay in preferring the Appeal was of 744 days. By the impugned order, the learned Additional District Judge has rejected the Application for condonation of delay. Shri Ketkar for the Petitioner submitted that the Appellate Court ought to have taken a liberal view especially when the ground for delay was that the papers of this particular Appeal along with papers of certain matters were misplaced in the office

of S.L.A. He submitted that a technical view is taken by the learned Additional District Judge by pointing out that nothing is placed on record to show that no disciplinary action has been taken by the Petitioner against the defaulting Clerk. He, therefore, submitted that the learned Judge ought to have adopted justice oriented approach and ought to have condoned delay, if necessary by awarding costs in favour of the Respondent. Shri Keluskar for the Respondent vehemently opposed the Petition and submitted that there is a gross negligence on the part of the Petitioner in preferring the Appeal. Proper Affidavits are not filed in the Application for condonation of delay and that is the reason why the delay is completely unexplained. He submitted that no interference is called for with the impugned order.

3. I have considered the submissions. Perusal of the averments made in the Application show that though the order passed by the trial Court was available, the Appeal could not be filed as the papers pertaining to the Appeal preferred by the Respondent along with the papers of the other Appeals were misplaced in the office of S.L.A. In paragraph 4 of the Petition all details of the movement of the papers of the Municipal Appeals which were misplaced in the office of S.L.A. have been stated. It is well settled that while considering the Application for condonation of delay the Court is required to adopt a liberal approach. In the present case, there is a valid explanation for the long delay. The papers of the Appeal along with the papers of other Appeals were misplaced in the office of S.L.A.

Considering the nature of the order which is sought to be challenged by preferring the Appeal and considering the explanation for condonation of delay, the learned Additional District Judge ought not to have rejected the said Application for delay on the ground that no administrative action has been initiated against the erring Clerk.

4. It is true that prejudice will be caused to the Respondent if the delay is condoned. However, the Respondent can be adequately compensated by ordering the payment of substantial amount by way of costs. Considering the facts and circumstances of the case, the amount of costs is quantified at Rs.10,000/-.

5. Hence, I pass the following order :

i) The impugned Judgment and Order dated 10th January 2003 is quashed and set aside subject to the condition that the Petitioner will pay an amount of Rs.10,000/- to the Respondent by way of costs within a period of six weeks from today. If the Petitioner-Corporation pays to the Respondent or deposits the amount of costs in the District Court within stipulated period, Misc. Application No.224 of 2002 will stand allowed and the District Court will proceed further with the hearing of the Appeal in accordance with law.

ii) Rule is made absolute in above terms.

Judge.